**Section 106.45 Determination of ability to pay services charges**

a) The Department, in determining the ability of the responsible person (recipient, responsible relative, guardian, trustee and/or payee) to pay services charges, shall assemble any necessary information pertaining to his or her financial status and shall then set the amount for which the responsible person shall be held liable. Recipients and all responsible persons must furnish financial information on admission or as soon thereafter as possible to enable the Department to make a proper determination of the sources available for the cost of services charges. The liability for payment of services charges shall be based on information available at the time of determination. (Such data may include savings, trusts, wills, evidence of indebtedness, evidence of court-ordered payments, and the like.) Each person for whom a determination has been made shall be issued a form DMHDD-612, Notice of Determination, notifying the person of his or her liability. Such notice shall be issued even when current determined liability is $0.00.

b) When there is a demonstrated ability to pay, payment for services is an obligation established by Sections 5-100 through 5-117 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-100 through 5-117] against the recipient, responsible relatives, guardians, trustees and/or payees.

c) If the responsible person fails to submit financial information as requested, the Department may assess services charges at the maximum rate of charge as provided in Section 106.25 until such information is supplied and an actual assessment can be determined. In the absence of billing during the period covered in such instances, the Department may consider that notices and requests for information as previously sent shall constitute ample notice of liability and indebtedness for such period. However, in subsequent review or annual redetermination involving responsible relatives, no services charges shall be retroactively established prior to the date of contact for financial information.

d) Subsequent review could be initiated by the recipient of services prior to the annual redetermination due to changes in ability to pay or as a result of an administrative hearing or by the Board of Reimbursement Appeals. Recipients and responsible relatives have a responsibility to inform the Department of any changes.

e) Liability of responsible relatives shall be reviewed annually and such responsible relatives shall be requested to submit copies of their most recent U.S. Individual Income Tax Return. This information will be used as a basis for determining services charges in accordance with this Part and the schedule of charges in Section 106.Table A of this Part.

f) The determination by the Department of the liability of a responsible person to pay an amount up to the maximum rate as established in Sections 106.25 and 106.25(b) shall continue in force until the Department determines a different amount on the basis of changes in circumstances surrounding the person's ability to pay, or until a change has been made in the standards of ability to pay set forth in Sections 106.25 and 106.25(b) or until a release from or a modification of services charges is granted upon a hearing on the petition of a person liable in accordance with Section 106.75 and Section 5-111 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-111].

g) The determination of the ability to pay and amount of liability of the recipient for services charges, up to the prevailing maximum rate established for recipients in Section 106.25, shall be based on all assets and income of the recipient. After considering the recipient's legal dependent's financial needs as covered in subsection (k) of this Section, all resources and assets are reduced to the allowable reserve exemption in accordance with subsection (h) of this Section.

h) The allowable reserve exemption, as provided for in Section 5-106 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-106], is determined by the amount of assets owned at the time of the recipient's admission except that the allowable reserve exemption from all sources cannot exceed that established by the Illinois Department of Public Aid at 89 Ill. Adm. Code 120.382. The recipient's allowable reserve exemption can only be increased by the unused portions of the monthly personal and clothing allowance or unspent workshop or other monetary incentive funds , such as living skills program funds. Payments to be paid by the recipient for services charges may not be deferred to build a reserve up to the maximum amount allowed.

i) If the recipient becomes eligible and is approved for Medicaid (42 U.S.C.A. 1396a (1996)), 42 CFR 430 (1996) and the Department of Public Aid's rules at 89 Ill. Adm. Code 120.40 and 120.382 govern the allowable reserve and personal and clothing allowance.

j) The Department shall allow deductions from income for a community spouse maintenance needs allowance and a family maintenance needs allowance for each dependent family member who does not have enough income to meet his or her needs. Family members include dependent children under age 21, dependent adult children, dependent parents or dependent siblings of either spouse who are living with the community spouse. To determine the amount of the deduction:

1) The deduction for the community spouse maintenance needs allowance, as set forth in the Department of Public Aid's rule at 89 Ill. Adm. Code 120.61(d), is equal to the community spouse maintenance needs standard less any non-exempt monthly income of the community spouse. The deduction is allowed only to the extent that income of the spouse who is receiving services at a Department-operated facility is contributed to the community spouse. However, the deduction for the community spouse maintenance needs allowance shall not be less than the amount ordered by the court for support of the community spouse or the amount determined as the result of the fair hearing.

2) The deduction for the family maintenance needs allowance for each dependent family member is equal to one-third of the difference between the family maintenance needs standard and any non-exempt income of the family member as set forth in the Department of Public Aid's rule at 89 Ill. Adm. Code 120.61(d).

k) Prior to the assessment of services charges against a recipient of services, the Department shall review the financial needs of the recipient's legal dependents. The financial needs of these legal dependents shall be based on amounts expended up to an amount equal to the minimum yearly income for which a responsible relative would be subject to a charge as shown in Section 106.Table A. Any amounts as allowed which are not expended for support of legal dependents claimed on the recipient's U.S Individual Income Tax Return, shall be subject to services charges.

l) When it is necessary for the Department to disclose information in order to collect services charges, such disclosure shall be limited to information needed to pursue collection, and the information so disclosed shall not be used for any other purpose nor shall it be redisclosed except in connection with such collection activities. (See Section 11 of the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110/11])

(Source: Amended at 18 Ill. Reg. 15606, effective October 5, 1994)